



Via Overnight Mail and Electronic Mail

September 13, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Verizon Arbitration, D.T.E. 04-33

Dear Ms. Cottrell:

Conversent's Opposition to Verizon's Motion for Reconsideration is enclosed for filing.

Thank you. Please contact me if you have any questions.

Very truly yours,

A handwritten signature in blue ink that reads 'Gregory M Kennan'.

Gregory M. Kennan
Director, Regulatory Affairs and Counsel

Cc: Tina W. Chin, Arbitrator
Jesse Reyes, Arbitrator
Paula Foley, Assistant General Counsel, Legal Division
Michael Isenberg, Director, Telecommunications Division
April Mulqueen, Assistant Director, Telecommunications Division
Berhane Adhanom, Telecommunications Analyst
Deborah Alexander, Telecommunications Analyst
Stella Finn, Telecommunications Analyst
Service List (by electronic and first-class mail)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**Petition of Verizon New England Inc. for
Arbitration of an Amendment To
Interconnection Agreements with Competitive
Local Exchange Carriers and Commercial
Mobile Radio Service Providers in
Massachusetts Pursuant to Section 252 of
the Communications Act of 1934, as
Amended, and the *Triennial Review Order***

D.T.E. 04-33

**CONVERSENT'S OPPOSITION
TO VERIZON'S MOTION FOR RECONSIDERATION**

Conversent Communications of Massachusetts, Inc. ("Conversent") opposes two aspects of Verizon Massachusetts' motion for clarification and/or reconsideration of the July 14, 2005 *Arbitration Order*. Conversent opposes Verizon's attempt to reverse the Department's imposition of a 30-day deadline for Verizon to challenge a CLEC order for high-capacity loops and dedicated transport. Verizon Motion at 12-14. Conversent also opposes Verizon's request that the Department clarify that the list of non-impaired wire centers be established as of March 11, 2005, and that MCI was not an "affiliate" of Verizon for purposes of calculating the number of fiber-based collocators in a given wire center. Verizon Motion at 9-12.

Discussion

I. The Department Should Maintain the 30-Day Deadline for Verizon to Challenge a CLEC Order for Which Verizon Intends to Seek Retroactive Repricing.

The Department should deny Verizon's motion to reconsider the 30-day time limit on Verizon's ability to challenge CLEC orders for UNEs in non-impaired wire centers, for which

Verizon intends to seek retroactive repricing of the UNE. Verizon Motion at 12-14; *see Arbitration Order* at 287-88. Only ministerial tasks are involved in challenging CLEC orders that Verizon believes improper. Verizon already has automated the process. Thirty days is more than enough time. A deadline will, as the Department recognized, provide a desirable measure of certainty for all parties.

The tasks associated with challenging a CLEC order are ministerial. Verizon has a list of the wire centers it claims are non-impaired. “In response to the request of the Chief of the FCC’s Wireline Competition Bureau, Verizon filed a list of wire centers that satisfy the TRRO criteria with regard to unbundling of high-capacity loops and transport. . . . As to Massachusetts, that filing identifies three wire centers in which the obligation to provide DS1 loops has been eliminated, and eight wire centers in which the obligation to provide DS3 loops has been eliminated.” Verizon Reply Brief (Apr. 26, 2005), at 20 & n. 25.

Thus, Verizon’s decision to initiate dispute resolution is simple. All that Verizon must do is answer a yes-or-no question: is the wire center on Verizon’s list for the particular UNE ordered? If a CLEC orders a UNE from a wire center that Verizon claims is non-impaired with respect to that UNE, then Verizon may send a letter disputing the CLEC’s right to the UNE.

Verizon already has automated the process for sending the dispute letters. The letters are computer-generated form letter. Producing them appears to require little human intervention.¹ Generating the letter cannot take more than a few minutes. There is no reason why Verizon cannot comply with a 30-day deadline.

Verizon argues that it should have an indefinite period of time to challenge an order for a facility that fails to satisfy the impairment criteria, because (it claims) the facility is not a UNE as

¹ The letters are black and white (unlike Verizon’s manually-produced correspondence which has a red corporate logo) and a mechanically reproduced signature.

a matter of law and the CLEC was not entitled to order it as a UNE in the first place. Verizon Motion at 13. This argument has no merit. The law provides many examples of situations where a part that fails to assert its rights in timely fashion risks losing them. Statutes of limitation and statutes of repose embody this well-established principle.

By imposing a deadline, the Department does not (as Verizon might claim) unfairly insulate CLECs from the risk of ordering forbidden UNEs and saddle Verizon with all such risk. Nor will a deadline promote (as Verizon might also claim) gaming of the system by CLECs who then will obtain a free ride for some period of time on a UNE to which the CLEC had no right. The easy answer, of course, is that Verizon need only dispute the CLEC order to end the supposed free ride. Since disputing an order is a simple act, Verizon can easily minimize any risk of CLEC free riding.

The Department established the thirty-day limit to impose some certainty upon a system that otherwise might produce undue uncertainty and expense. As the Department correctly reasoned, “incorporation of a time interval provides guidance to the parties as to their rights and obligations. It will also prevent accrual of large retroactive bills if Verizon delays challenging a CLEC request for months or even years.” *Arbitration Order* at 288. If Verizon wants to seek retroactive repricing, it can and should do so promptly.

II. The Department Should Not Foreclose Consideration of the MCI and SBC/AT&T Fiber Collocation Issues, Which It Expressly Left Open.

Verizon seeks to have the Department clarify that the list of non-impaired wire centers be established as of March 11, 2005, and to state explicitly that MCI was not an “affiliate” of Verizon for purposes of calculating the number of fiber-based collocators in a given wire center. Verizon Motion at 9-12. The Department should reject Verizon’s request.

Conversent and other CLECs had requested that the Department scrutinize Verizon's list of supposedly non-impaired wire centers. Such scrutiny would involve, among other things, determining the status of MCI as a fiber-based collocater in light of its announced plan to be acquired by Verizon.² *See, e.g.*, Conversent's Initial Brief at 48-51; CCG Initial Brief at 21.

Verizon argued against determining the list of wire centers on a one-time, comprehensive basis.

“[T]here is no reason to litigate in advance *any issues* regarding whether wire centers satisfy the FCC's non-impairment criteria for high-capacity loops under the *TRRO*. Verizon has not challenged any CLEC order for DS1 and DS3 loops in Massachusetts, so there is nothing, yet, for the Department to do. There are enough issues for the Department to resolve in this arbitration without trying to address hypothetical disputes. If Verizon wishes to challenge a future order from a CLEC for high-capacity loops or transport, Verizon will raise that dispute in the manner the FCC prescribed in the *TRRO*, not in this arbitration.

Verizon Reply Brief, at 20 (emphasis added).

The Department rejected the CLECs' request on the ground that the issue was not ripe in the absence of a concrete dispute over a specific UNE order. *Arbitration Order* at 279. In particular, the Department expressly reserved the issue of MCI's status. While acknowledging the CLEC's concerns on this issue, the Department reasoned, “[T]he CLECs' concerns regarding the announced merger between MCI and Verizon and its impact on wire center designations are minimized because wire center designations will not be litigated until a dispute arises.” *Arbitration Order* at 286.

The Department's ruling was consistent with Verizon's argument against determining the list of wire centers on a one-time, comprehensive basis. Now, however, Verizon argues exactly the opposite. It seeks to have the Department resolve a generic issue, the status of MCI, in the absence of a specific dispute.

² It would also involve the similar issue whether to count SBC and AT&T as one or two collocators.

As the result of its decision to reserve the issue for a specific dispute, the Department does not now have the benefit of the parties' views on the legal and policy issues associated with the determination of MCI's status. For example, the fiber-based collocater criterion is a proxy for competitive facility deployment in a given wire center. *TRRO* ¶ 96. Clearly, affiliates do not compete with one another, so the FCC excluded ILEC affiliates from the count. An important policy issue is whether MCI is competing in any meaningful way with a company by which it has agreed to be acquired, and, therefore, whether its facilities should be considered an indicator of competitive deployment.

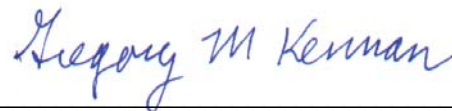
Conversent would have preferred that the Department resolve the issue comprehensively, with the Department having a reasonable record and the benefit of substantial briefing. However, having decided to defer scrutiny of the wire center list until a specific dispute arises (if ever), the Department should stay its course and should not now determine the affiliate issue in the abstract, on a record that is meager at best. The Department should reject Verizon's motion.

Conclusion

For the reasons stated above, the Department should reject Verizon's motion for clarification and/or reconsideration of the issues described above.

September 13, 2005

Respectfully Submitted,



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